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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,553	06/30/2006	Frederic Bellott	016906-0402	8214

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FOLEY AND LARDNER LLP
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WASHINGTON, DC 20007

EXAMINER

BRINSON, PATRICK F

ART UNIT	PAPER NUMBER
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3754

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/541,553

Applicant(s)

BELLOTT ET AL.

Examiner

Patrick F. Brinson

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 15, 17, 18 and 24 is/are rejected.
- 7) ☒ Claim(s) 11-14, 16 and 19-23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/06/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 11, 14-16, 19, 21 and 23 are objected to because of the following informalities: Claims 11, 14 and 15 recite “the sealing face” without proper antecedent basis. Claims 19, 21 and 23 recite “the sealing flange” without proper antecedent basis. Claim 16 recites “the threaded plug” and “the sealing face” without proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,062,325 to **McCauley et al.**

The patent to **McCauley et al.** discloses a protective cap for sealing the end of a vessel by means of a sealing stopper (10) the vessel having a tube wall (14) basically projecting above the sealing stopper wherein the protective cap (20) is arranged in such a way that it seals off the vessel in the area of the end of the tube wall projecting above the cap, as recited in claim 1. The protective cap has gripping means that

interact with a gripping means of the sealing stopper, in the form of a plug (24) that engages a seat (44) in the sealing stopper, the plug including an external thread which engages an internal thread (25) of the seat, as recited in claims 4, 5 and 7. **McCauley et al.** does not specifically disclose the material from which the protective cap is formed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 8-10, 15, 17, 18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2,366,975 to **McChesney**.

The patent to **McChesney** discloses a protective cap for sealing the end of a vessel by means of a sealing stopper (3) the vessel having a tube wall (1) basically projecting above the sealing stopper wherein the protective cap is arranged in such a

way that it seals off the vessel in the area of the end of the tube wall projecting above the cap, as recited in claim 1. The cap has an annular face that rests on the peripheral inner circumferential surface of the tube wall and seals off the vessel, as recited in claim 3, or alternatively can rest on the ends of the vessel, as recited in claim 2. The protective cap has a seat into which a lug portion or seat in which a plug of the sealing stopper engages, as recited in claim 6. A peripheral flange of the cap includes a cylindrical sealing face for bearing on the inner circumferential surface of the tube wall, as recited in claim 10. The protective cap further includes a centrally arranged, profiled knob (2a), as recited in claim 17, and the knob in a different embodiment has a hollow construction with an outwardly open blind having a hexagonal cross-section, as recited in claim 18. **McChesney** does not specifically disclose the material from which the protective cap is formed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

4. Claims 11-14, 16 and 19-23 would be allowable if rewritten to overcome the claim objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to **Jackson, Karpenko, Kalen** and **Bates** are all pertinent to Applicant's invention in disclosing protective caps for closure devices. The patent to **Kaspar et al.** is pertinent in disclosing a sealing plug device similar to that of the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick F. Brinson
Primary Examiner
Art Unit 3754

P. F. Brinson
March 31, 2007